

PUBLIC SERVICE COMMITTEE CHAIRS NAMED

Key Committee leaders selected for the 2015-2016 session

The Massachusetts legislature has named its Co-Chairs of the Joint Committee on Public Service for the 2015-2016 legislative session. Senate President Stanley Rosenberg has named Senator James E. Timilty of Walpole as Senate Co-Chair of the Committee and House Speaker Robert A. DeLeo has named Representative James M. Murphy of Weymouth to be the House Co-Chair of the Committee.



Senator James E. Timilty

Senator James E. Timilty attended Saint Louis University. He has served in the Massachusetts Senate since 2005. Chairman Timilty also holds the Chairmanship of the Joint Committee on Public Safety and Homeland Security.

Representative James M. Murphy is a

graduate of Merrimack College and also holds a J. D. from Suffolk University Law School. He has served in the House since 2001. Chairman Murphy previously served as Vice Chairman of the Joint Committee on Public Service.

Senator Timilty and Representative Murphy will chair the numerous committee hearings to be held on hundreds of bills impacting pensions, health care and related



Representative James M. Murphy

issues during the session. These bills will remain active until the end of the current legislative session in January, 2017.

PERAC monitors all bills impacting the Massachusetts pension system, retirement and related issues. PERAC filed one bill this session:

AN ACT AUTHORIZING THE PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION TO HOLD HEARINGS.

PERAC's Executive Director Joseph E. Connarton welcomed the new Chairs:

"I want to congratulate Chairman Timilty and Chairman Murphy on their appointments to be Co-Chairs of the Joint Committee on Public Service. This is an important committee impacting not only the tens of thousands of state, municipal and other public employees in Massachusetts but also tens of thousands of retirees of Massachusetts 104 retirement systems.

As the agency responsible for overseeing the retirement boards and their activities, PERAC pays great attention to legislative initiatives that would impact the benefits of both active and retired employees. In addition, we are asked on numerous occasions during the session to provide technical assistance on bills by the Public Service and Ways and Means Committees.

PERAC serves as a resource to the legislature and its committees on any issue impacting pensions and retirement. We look forward to working closely with the new Chairs and members of the Joint Committee on Public Service on these issues as they unfold during the 2015-2016 legislative session."

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INVESTMENT RETURN ASSUMPTIONS

By James Lamenza
Actuary

Over the past decade, investment return assumptions used by actuaries have generally decreased reflecting the economic environment and future expectations. The two charts below illustrate this trend.

The first chart shows investment return assumptions used by Massachusetts public plans in 2003, 2012, and currently. Note that almost half the systems used an assumption above 8.0% in 2003. The current chart represents a stark contrast

as almost 75% of systems are using an assumption under 8.0%.

Beginning with our January 1, 2013 local valuations, PERAC began recommending using a 7.75% investment return assumption as our “standard” assumption (assuming a reasonable asset allocation). A reduction in the investment return assumption increases plan liabilities. An important item to keep in mind is that as we adjusted the investment return assumption, we also lowered the salary increase assumption. Over the long term, these assumptions should move together. This change at least

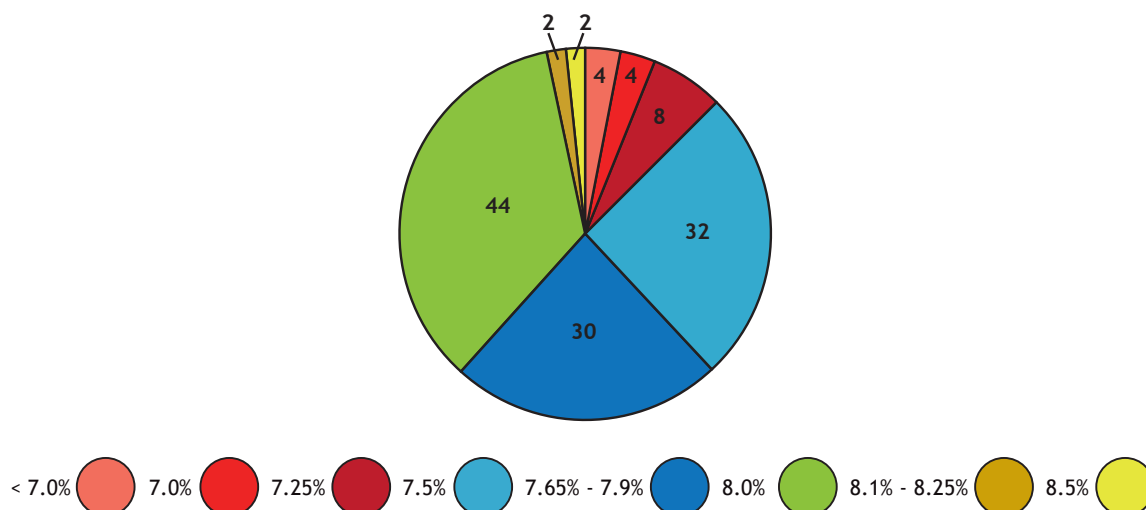
partially mitigates the impact of reducing the investment return assumption.

The second chart illustrates investment return assumptions of large public plans across the country based on an analysis by The National Association of State Retirement Administrators (NASRA). The NASRA survey includes data for 126 plans. Most of the plans are state or state teacher plans and the remainder are generally large city plans. The national assumptions are consistent with the Massachusetts assumptions. The average investment return assumption in the NASRA study is 7.71%.

Investment Return Assumptions Massachusetts Public Plans



National State, Teacher, and City Plans



Source: NASRA Public Fund Survey of 126 Large Plans, October 2014

PERAC WINS LONG DALA BATTLE WITH EXCESS EARNER

Case appealed to the Contributory Retirement Appeal Board

By Derek Moitoso
Compliance Counsel

Paul Conway (“Conway”) was a City of Medford firefighter who owned 50% of a roofing and construction company with his wife’s cousin. In March 2000, he applied for accidental disability retirement due to a knee injury. Within the same month, Conway transferred his 50% ownership in the business to his wife. In 2001, the Medford Retirement Board (“MRB”) granted his accidental disability retirement. In 2007, the roofing business dissolved contentiously and litigiously.

In 2010, a tip was submitted to PERAC’s confidential Fraud Hotline and claimed Mrs. Conway did no work for the roofing company and the transfer of ownership was done to avoid § 91A’s earning limitation. PERAC determined excess earnings for years 2004 – 2007 of \$948,680.01 with a refund due of \$154,237.44, the amount of the retirement allowance paid to Conway during this period.

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MRB held an extensive evidentiary hearing on February 9, 2011, with its counsel as the hearing officer and determined Conway had no excess earnings. PERAC rejected MRB’s decision and MRB appealed PERAC’s decision on this particular issue to the Division of Administrative Law Appeals (“DALA”). PERAC won this appeal on all grounds. See *Medford Ret. Bd. v. Public Employee Ret. Admin. Comm’n*, CR-11-161 (DALA 2013).¹ Conway also appealed the excess earnings determination separately.

After losing its appeal, MRB removed itself from the case and Conway continued the appeal on the excess earnings issues. On February 20, 2015, the DALA Magistrate determined that: Conway had a significant role that substantially contributed to the company’s profits; the wages he was paid did not reflect his business contributions; Mrs. Conway’s role was limited to minimal administrative errands; and, her work did not substantially contribute to the company’s profits by looking at the “fair value” of labor rather than just the

wages paid.

DALA relied greatly on Conway’s sworn testimony during the business dissolution proceeding, where he described his extensive role in the business. See *Conway v. Swansburg and A.C.S. Roofing & Construction Co., Inc.*, No. 2008-00989 (Middlesex Super. Ct. (2008)). DALA held that income from a spouse’s ownership in a business may be attributed to a retiree for purposes of calculating excess earnings under § 91A where the retiree’s labor, management, or supervision contributed to that income citing *Steere v. Dukes County Ret. Bd. and Public Employee Ret. Admin. Comm’n*, CR-09-312 (2010).

As a result of this decision, PERAC correctly determined excess earnings for years 2004 – 2007 of \$948,680.01 with a repayment due of \$154,237.44 that must be enforced by the MRB.

Conway has appealed this case to the Contributory Retirement Appeal Board.

¹The Medford Retirement Board filed a motion for summary decision requesting that DALA determine that PERAC’s failure to file an appeal of MRB’s G.L. c. 32, § 91A excess earnings determination makes the MRB’s decision final and binding on the parties.

After MRB issued a decision finding that Paul Conway had no excess earnings pursuant to G.L. c. 32, § 91A, PERAC informed MRB that its determination was based upon an error of law and then directed MRB to adopt a decision consistent with the law and PERAC regulations.

On September 27, 2013, DALA issued a decision denying MRB’s motion for summary judgment and found that PERAC is not required to file any appeal of MRB’s decision, as it has supervisory authority over local retirement boards. DALA found PERAC’s supervisory authority to be “comprehensive and pervasive.” Further, DALA explained that PERAC’s authority to reverse a retirement board’s G.L. c. 32, § 91A excess earnings determination was specifically upheld by the Supreme Judicial Court in *Boston Ret. Bd. v. CRAB*.

Enforcement News

SEC CHARGES MASSACHUSETTS-BASED INVESTMENT ADVISERS WITH MISAPPROPRIATION OF MONEY FROM AN INVESTMENT FUND

PRESS RELEASE FROM U.S. SECURITIES AND EXCHANGE COMMISSION

LITIGATION RELEASE NO. 23171 / JANUARY 9, 2015

SECURITIES AND EXCHANGE COMMISSION V. DANIEL THIBEAULT ET AL., CIVIL ACTION NO. 1:15-CV-10050 (D. MA)

The Securities and Exchange Commission announced that it has filed charges against Massachusetts-based investment advisers, their principal, and others concerning the alleged misappropriation of at least \$16 million belonging to an investment fund managed by some of the defendants.

In the complaint filed in federal court in Boston, the SEC charged as defendants:

- **Daniel Thibeault** of Framingham, Massachusetts;
- **Graduate Leverage, LLC**, an asset management and financial advisory firm based in Waltham, Massachusetts, of which Thibeault is the principal owner, president and Chief Executive Officer;
- **GL Capital Partners, LLC**, an investment adviser based in Waltham, Massachusetts that is controlled by Thibeault;
- **GL Investment Services, LLC**, an investment adviser based in Waltham, Massachusetts that is indirectly owned by Thibeault; and
- **Taft Financial Services, LLC**, which is based in Texas and is believed to be controlled by Thibeault.

The SEC's complaint alleges that GL Capital Partners, LLC and its principal, Daniel Thibeault, were the investment advisers to a fund called the GL Beyond Income Fund, and that they misappropriated at least \$16 million of the money that belonged to this fund. According to the complaint, the GL Beyond Income Fund's

assets consisted primarily of individual variable rate consumer loans. According to the complaint, Thibeault and other defendants solicited investments in the GL Beyond Income Fund by representing that investors' money would be pooled and used to make or purchase consumer loans. These consumer loans would then constitute assets of the GL Beyond Income Fund, and would provide a return to the investors when interest and principal payments were made on the loans. The SEC alleges that from at least 2013 to the present, Thibeault and other defendants engaged in a scheme to create fictitious loans to divert investor money from the GL Beyond Income Fund, and to report these fake loans as assets of the GL Beyond Income Fund, thereby concealing the fact that Thibeault and the other defendants had misappropriated millions of dollars from the GL Beyond Income Fund. According to the SEC's complaint, the scheme involved the fabrication of paperwork purporting to reflect numerous six-figure consumer loans using the names and personal information of individuals who were unaware that loans were being originated in their names. The complaint further alleges that money from the GL Beyond Income Fund was disbursed to fund these fictitious loans, but the borrowed money did not go to the purported borrowers whose names appeared on the documentation. Instead, it went to Thibeault and other defendants. The SEC alleges that Thibeault and other defendants misappropriated the money from these fake loans and used it for personal expenses and to run businesses other than the GL Beyond Income Fund, as well as to perpetuate the scheme by making "interest payments" on fake loans.

The SEC alleges that the defendants violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933 and that Thibeault, GL Capital Partners, LLC, and GL Investment Services, LLC, also violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The SEC seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudg-

ment interest, and civil penalties against each of these defendants.

The SEC also charged two other parties as relief defendants based on their receipt of investor funds: GL Advisor Solutions, Inc., a corporation based in the Philippines that is controlled by Graduate Leverage, LLC and Thibeault; and Shawnet Thibeault, who is Daniel Thibeault's wife. The SEC seeks disgorgement plus prejudgment interest from these relief defendants.

In addition, the SEC has asked the court to consider certain preliminary relief against the parties, including, variously, temporary restraining orders, preliminary injunctions, asset freezes, an accounting of investor funds and all assets in their possession, a prohibition from soliciting or accepting additional investments, and other preliminary relief.

To read the full complaint go to: <https://www.sec.gov/litigation/complaints/2015/comp23171.pdf>

Enforcement News

FBI ANNOUNCES INDICTMENT OF DANIEL THIBEAULT OF FRAMINGHAM

AN EXCERPT FROM THE FBI PRESS RELEASE:

“Daniel Thibault, 40, of Framingham, was charged in an eight-count indictment with securities fraud, wire fraud, aggravated identity theft, and obstruction of justice. Thibault was previously arrested on a complaint in December charging him with a single count of securities fraud.

“As alleged in the indictment, Thibault, a 2004 graduate of Harvard Business School, is the founder and principal owner of Graduate Leverage, LLC, an asset management and financial advisory firm. Thibault also served as the co-portfolio manager of the GL Beyond Income Fund, a mutual fund

launched in March 2012 that purported to invest in consumer loans to individuals with graduate degrees—including medical doctors, dentists, veterinarians, and attorneys—who the fund described in marketing materials as “less susceptible to economic downturns.”

“The indictment alleges that many of the loans purportedly issued by the fund were fictitious, and the individuals in whose names they were issued—friends and associates of Thibault—never applied for them and did not receive the money. Instead, Thibault allegedly used the fictitious loans to divert a portion of the fund’s assets into the operating accounts of his company, and then used the money for business and

personal expenses. In an effort to perpetuate and conceal his scheme, Thibault occasionally used the proceeds of new loans to make interest payments on fictitious loans he had previously caused the fund to issue...”

To read the full press release go to:
<http://www.fbi.gov/boston/press-releases/2015/harvard-trained-owner-of-financial-services-firm-indicted-on-charges-of-fraud-obstruction-of-justice>

ATTORNEY GENERAL MAURA HEALEY ANNOUNCES PENSION FRAUD INDICTMENT Charges raised against former lobbyist

Massachusetts Attorney General Maura Healey announced that Richard W. McDonough has been indicted on pension fraud charges. The AG’s press release notes,

“We allege that this defendant falsely represented himself as a full-time state employee in order to collect a state pension, while at the same time running a full-time lobbying business,” said AG Healey. “Actions such as those alleged here defraud taxpayers and undermine the integrity of the pension system.” The agency for which Mr. McDonough worked was the Merrimack Special Education Collaborative.

According to the release, Mr. McDonough was indicted by a Suffolk County Grand Jury on the charges of presentation of a False Claim and Procurement Fraud and was announced on February 23, 2015. This case arose from a referral from the Inspector General’s office.

“Mr. McDonough’s actions not only defrauded the state pension system but also were an abuse of funds meant for educating children with special needs,” said Inspector

General Glenn A Cunha.

Authorities allege that beginning in 2003, McDonough was put on the payroll as a full-time employee of the Collaborative, serving as its Director of Public Affairs and Governmental Relations. From his appointment in 2003 until 2008, McDonough received a regular pay check from the Collaborative and was enrolled in the state’s pension system.

However, an investigation revealed that McDonough did very little actual work for the organization. Authorities allege that McDonough never produced any work product, did not have an office at any of the Collaborative’s work locations or an office phone number, and he never regularly reported to people in management.

Despite his alleged full-time employment with the Collaborative, authorities further allege that McDonough continued his work for his business, McDonough Associates, earning up to \$1.1 million per year.

In early 2009, McDonough submitted a retirement application to the State Board

of Retirement that included the alleged fraudulent representation that he was a full-time employee of the Collaborative between 2003 and 2008. He subsequently began receiving pension payments. Between May 2009 and February 2012, McDonough received a total of \$96,515 in pension payments. The State Retirement Board suspended McDonough’s pension in February 2012 when allegations of misconduct surfaced.

These charges are allegations, and defendants are presumed innocent until proven guilty.

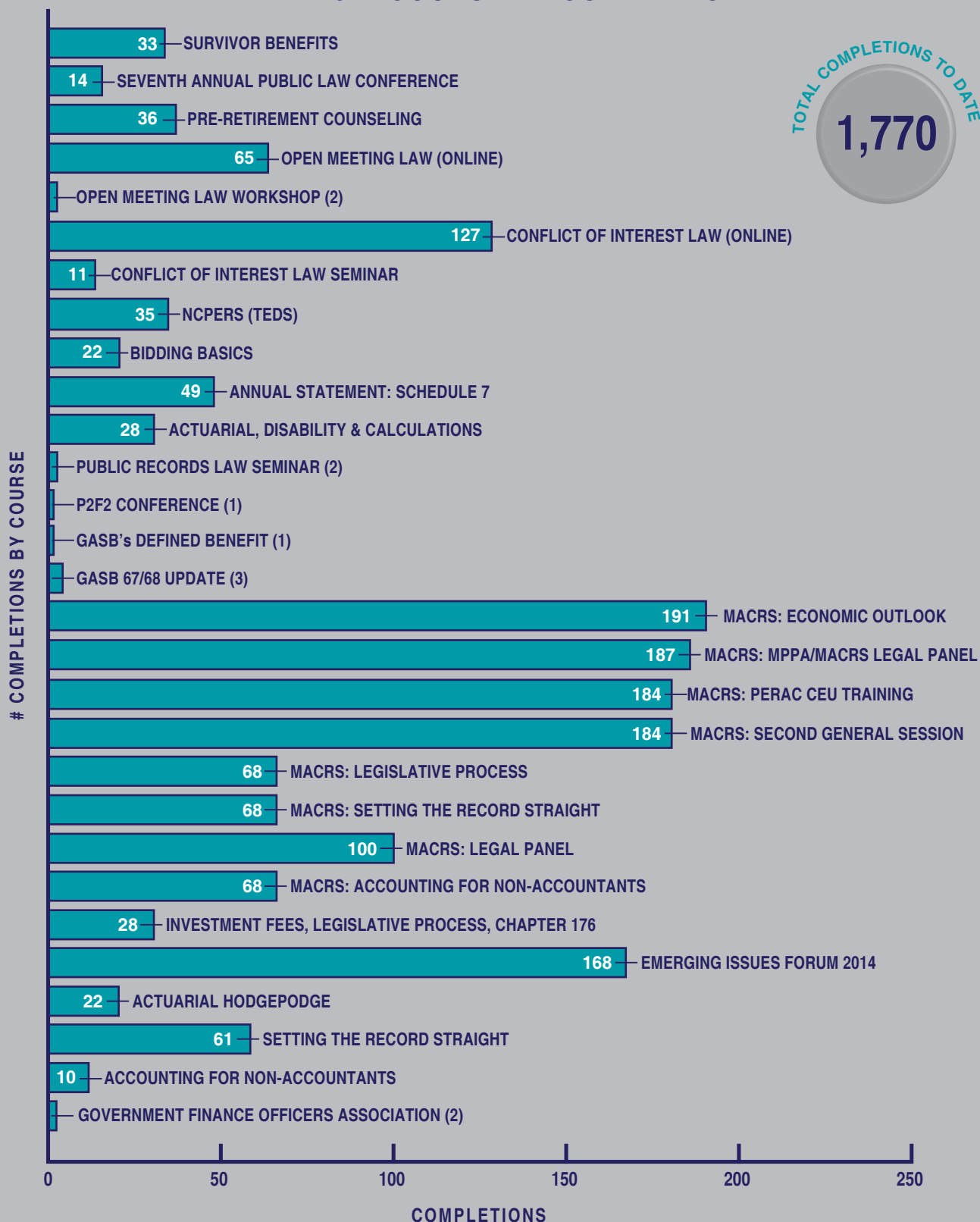
The Attorney General’s full press release can be accessed at the following web address:

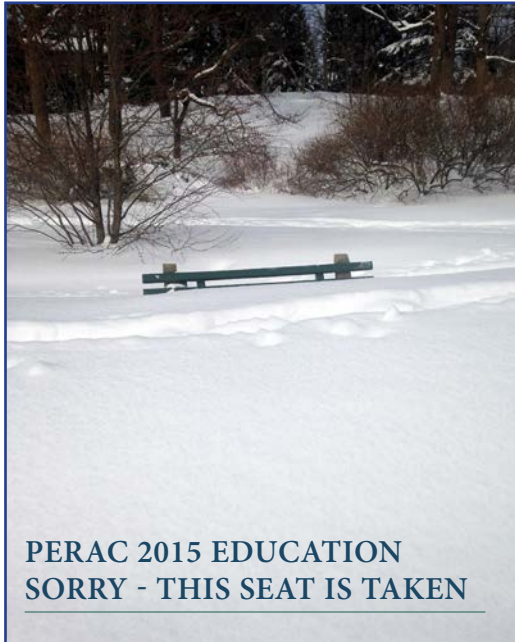
<http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-02-23-mc-donough-indictment.html>

PERAC CONTINUING EDUCATION COMPLIANCE UPDATE*

(*data as of 12/31/14)

2014 COURSE BY COMPLETION





The chart on the previous page shows the educational opportunities offered in calendar year 2014 and the number of board members who received credit for these events. Unfortunately, the record breaking weather this winter caused us to cancel or reschedule several training dates this quarter. For that reason, we will now offer “snow dates” for training dates scheduled during the winter months. Please look out for the second quarter education schedule to be released soon.

SAVE
the **DATE**

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

11th
EMERGING
ISSUES

FORUM



where:

Hogan Conference Center
College of the Holy Cross, Worcester, MA

when:

September 17, 2015
9 am to 3 pm

Look for Registration Materials this Summer!

note!

Attendance = **3** educational credits for Board Members



CHANGES COMING AT END OF YEAR TO PERAC WEBSITE

by *Natacha Dunker*
Communications Director

The PERAC Communications Unit is hard at work transitioning the current website to the Mass.gov portal. The goal of the new website is to make information easier to locate, modernize the technology, and to migrate to a platform that will be continuously updated. Working with the Unit is a team of web designers and usability experts from Mass.gov.

Part of the redesign with the site is to rethink the website itself from a catch-all of everything ever published by PERAC to a platform for disseminating newer and current information. With that in mind, once we transition to the new site we will no longer house every memo and annual report ever published as older documents will always be available on site or on the state library's website.

We have taken your previous comments into account as we decide how to best organize the site, but if you would like to provide additional feedback, contact the unit at nadunker@per.state.ma.us.



UPCOMING COMMISSION MEETING SCHEDULE*

► **April 8, 2015**

Commission Meeting

Time: 10:30 AM

► **May 13, 2015**

Commission Meeting

Time: 10:30 AM

► **June 10, 2015**

Commission Meeting

Time: 10:30 AM

MEETINGS ARE HELD IN THE

COMMISSION BOARD ROOM

AT PERAC'S SOMERVILLE OFFICE

LOCATED AT

5 MIDDLESEX AVENUE

SOMERVILLE, MA

UNLESS OTHERWISE NOTED

*Dates and locations are subject to change.

Meetings are posted on our website, our office and with the Secretary of State.



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